American Bar Association
www.supremecourtpreview.org

No. 07-542

In the Supreme Court of the United States

STATE OF ARIZONA,
Petitioner,
v.
RODNEY JOSEPH GANT,
Respondent.

On Petition for Writ of Certiorari to the Arizona Supreme Court

BRIEF OF FLORIDA, ALABAMA, ALASKA, CALIFORNIA, COLORADO, HAWAII, IDAHO, ILLINOIS, INDIANA, KANSAS, MARYLAND, MICHIGAN, MINNESOTA, MISSOURI, NEW HAMPSHIRE, NEW MEXICO, NORTH DAKOTA, OKLAHOMA, OREGON, PENNSYLVANIA, SOUTH DAKOTA, TENNESSEE, WASHINGTON, WISCONSIN AND WYOMING, AS AMICI CURIAE IN SUPPORT OF PETITIONER

BILL MCCOLLUM
Attorney General of Florida
Scott D. Makar*
Solicitor General
Craig D. Feiser
Courtney Brewer
Deputy Solicitors General
PL-01, The Capitol
Tallahassee, Florida 32399-1050
850-414-3300
850-410-2672 fax
Counsel for Amicus Curiae
State of Florida

*Counsel of Record

Attorney General Troy King
Office of the Attorney General
Alabama Statehouse
11 South Union Street
Montgomery, AL 36130

Talis J. Colberg
Attorney General of Alaska
P.O. Box 110300
Juneau, Alaska 99811

Edmund G. Brown, Jr.
Attorney General
State of California
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550

John W. Suthers
Attorney General
State of Colorado
1525 Sherman St., Seventh Floor
Denver, CO 80203

Mark J. Bennett
Attorney General
State of Hawaii
425 Queen Street
Honolulu, HI 96813

Lawrence G. Wasden
Idaho Attorney General
P.O. Box 83720
Boise, ID 83720-0010

Lisa Madigan
Attorney General of Illinois
100 W. Randolph St., 12th Floor
Chicago, IL 60601

Steve Carter
Attorney General of Indiana
302 West Washington Street
Indiana Government Center
South, Fifth Floor
Indianapolis, IN 46204

Steven N. Six
Attorney General
State of Kansas
120 SW 10th Ave., 2nd Floor
Topeka, KS 66612-1597

Douglas F. Gansler
Attorney General of Maryland
200 St. Paul Place
Baltimore, MD 21202

Michael A. Cox
Michigan Attorney General
P.O. Box 30212
Lansing, MI 48909

Lori Swanson
Attorney General of Minnesota
102 State Capitol
75 Rev. Dr. Martin Luther King,
Jr. Blvd.
St. Paul, MN 55155-1609

Jeremiah W. (Jay) Nixon
Attorney General of Missouri
Supreme Court Building
207 W. High Street
Jefferson City, MO 65101

Kelly A. Ayotte
Attorney General of New
Hampshire
33 Capitol Street
Concord, NH 03301

Gary K. King
Attorney General
State of New Mexico
P.O. Drawer 1508
Santa Fe, NM 87504-1508

Wayne Stenehjem
Attorney General of North
Dakota
600 E. Boulevard Avenue
Bismarck, ND 58505-0040

W.A. Drew Edmondson
Attorney General of Oklahoma
313 N.E. 21st Street
Oklahoma City, OK 73105-4894

Hardy Myers
Attorney General
State of Oregon
1162 Court St. N.E.
Salem, OR 97301

Thomas W. Corbett, Jr.
Attorney General
Commonwealth of Pennsylvania
16th Floor, Strawberry Square
Harrisburg, PA 17120

Lawrence E. Long
Attorney General
State of South Dakota
1302 E. Highway 14, Suite 1
Pierre, SD 57501-8501

Robert E. Cooper, Jr.
Attorney General of Tennessee
P.O. Box 20207
Nashville, TN 37202-0207

Robert M. McKenna
Attorney General of Washington
1125 Washington Street
P.O. Box 40100
Olympia, WA 98504-0100

J.B. Van Hollen
Attorney General for Wisconsin
State Capitol, Ste. 114 E.
P.O. Box 7857
Madison, WI 53707-7857

Bruce A. Salzburg
Wyoming Attorney General
State Capitol Bldg.
Cheyenne, WY 82002

QUESTION PRESENTED

Does the Fourth Amendment require law enforcement officers to demonstrate a threat to their safety or a need to preserve evidence related to the crime of arrest in order to justify a warrantless search incident to arrest conducted after the vehicle's recent occupants have been arrested and secured?

TABLE OF CONTENTS

Page

QUESTION PRESENTED..... i

TABLE OF AUTHORITIES..... iv

STATEMENT OF AMICI INTEREST 1

SUMMARY OF ARGUMENT..... 1

ARGUMENT 3

I. PRINCIPLES OF STARE DECISIS NECESSITATE THIS COURT'S CONTINUED ADHERENCE TO THE RULE FORMULATED IN *BELTON* AND REAFFIRMED IN *THORNTON*, AND THE CONTINUED APPLICATION OF THE RULE IN CIRCUMSTANCES SUCH AS GANT'S..... 3

A. No Special Justification Exists for Disregarding the Principles of Stare Decisis and Overruling the Bright-Line *Belton* Rule. 6

1. Other courts in the Amici States have relied on the bright-line, workable rule announced in *Belton*……7

2. Changed circumstances do not justify reversing the workable *Belton* rule, reaffirmed by this Court in *Thornton*..... 16

3. Particularly in the area of police procedure, this Court should not overrule constitutional precedent that promotes the social welfare and has proven workable.....18

II. PROTECTION OF LAW ENFORCEMENT AND THE PUBLIC MAKES CONTINUED ADHERENCE TO THE *BELTON* RULE VITALLY IMPORTANT.....24

A. Requiring Officers to Analyze the Particulars of Every Situation When Making an Arrest Necessarily Threatens the Safety of Officers and the Public, and Inhibits Law Enforcement's Ability to Effectively Fight Crime..... 24

B. Rising Violent Crime Rates and the Threat to Officer Safety Make the Bright-Line Rule Critical to Effectuating Arrests Safely..... 30

CONCLUSION..... 34

TABLE OF AUTHORITIES

CASES

Agostini v. Felton,
521 U.S. 203 (1997) 18

Almeida-Sanchez v. United States,
413 U.S. 266 (1973) 22

Arizona v. Rumsey,
467 U.S. 203 (1984) 19

Atwater v. City of Lago Vista,
532 U.S. 318 (2001) 17, 20

Black v. State,
810 N.E.2d 713 (Ind. 2004) 11

California v. Carney,
471 U.S. 386 (1985) 22, 27

Chapas v. State,
404 So. 2d 1102 (Fla. Dist. Ct. App. 1981) 10

Chimel v. California,
395 U.S. 752 (1969) 18

Commonwealth v. Toole,
448 N.E.2d 1264 (Mass. 1983) 16

Commonwealth v. White,
669 A.2d 896 (Pa. 1995) 16

Cupp v. Murphy,
412 U.S. 291.....29

Dickerson v. United States,
530 U.S. 428 (2000) 19

Dunaway v. New York,
442 U.S. 200 (1979) 18, 24

Glasco v. Commonwealth,
513 S.E.2d 137 (Va. 1999) 13

Gundrum v. State,
563 So. 2d 27 (Ala. Cr. App. 1990) 11

Michigan v. Long,
463 U.S. 1032 (1983) 5

Miranda v. Arizona,
384 U.S. 436 (1966) 19

Mitchell v. United States,
526 U.S. 314 (1999) 19

Nealy v. State,
636 P.2d 378 (Okla. Crim. App. 1981) 13

New York v. Belton,
453 U.S. 454 (1981) .....passim

New York v. Earl,
431 U.S. 943 (1977) 28

Northrop v. Trippett,
265 F.3d 372 (6th Cir. 2001) 8

Patterson v. McLean Credit Union,
491 U.S. 164 (1989) 6, 7

Payne v. Tennessee,
501 U.S. 808 (1991) 6, 7, 19

Pennsylvania v. Mimms,
434 U.S. 106 (1977) 25

People v. Carter,
117 P.3d 476 (Cal. 2005) 11

People v. Kirk,
103 P.3d 918 (Colo. 2005) 11

Pierce v. State,
171 P.3d 525 (Wyo. 2007) 15

Plakas v. Drinski,
19 F.3d 1143 (7th Cir. 1994) 29

Planned Parenthood of Southeastern Pennsylvania v. Casey,
505 U.S. 833 (1992) 7

Rainey v. Commonwealth,
197 S.W.3d 89 (Ky. 2006) 12

Randall v. Sorrell,
548 U.S. 230 (2006) 7

Robbins v. California,
453 U.S. 420 (1981) 22

Seminole Tribe of Florida v. Florida,
517 U.S. 44 (1996) 18

State v. Anderson,
910 P.2d 180 (Kan. 1996) 15

State v. Blasich,
541 N.E.2d 40 (N.Y. 1989) 16

State v. Brody,
686 P.2d 451 (Ore. Ct. App. 1984) 16

State v. Charpentier,
962 P.2d 1033 (Idaho 1998)..... 14

State v. Cooper,
286 S.E.2d 102 (N.C. 1982) 12

State v. Eckel,
888 A.2d 1266 (N.J. 2006) 15

State v. Fernon,
754 A.2d 463 (Md. Ct. Spec. App. 2000) 12, 22, 29

State v. Gant,
162 P.3d 640 (Ariz. 2007) 8, 25

State v. Garcia,
461 N.W.2d 460 (Iowa 1982) 11

State v. Garcia,
801 S.W.2d 137 (Tex. Crim. App. 1990) 13

State v. Giron,
943 P.2d 1114 (Utah Ct. App. 1997) 13

State v. Gomez,
932 P.2d 1 (N.M. 1997)..... 15

State v. Harvey,
648 S.W.2d 87 (Mo. 1983) 12

State v. Henning,
171 P.3d 660 (Kan. Ct. App. 2007) 15

State v. Hensel,
417 N.W.2d 849 (N.D. 1988) 13

State v. Laplante,
534 A.2d 959 (Me. 1987)..... 12

State v. McLendon,
490 So. 2d 1308 (Fla. Dist. Ct. App. 1986) 10

State v. Miskolczi,
465 A.2d 919 (N.H. 1983)..... 12

State v. Murrell,
764 N.E.2d 986 (Ohio 2002) 14

State v. Pittman,
556 N.W.2d 276 (Neb. Ct. App. 1996)..... 12

State v. Saufley,
574 So. 2d 1207 (Fla. Dist. Ct. App. 1991) 10

State v. Stroud,
720 P.2d 436 (Wash. 1986)..... 13, 16

State v. Valdes,
423 So. 2d 944 (Fla. Dist. Ct. App. 1982) 10

State v. Waller,
918 So. 2d 363 (Fla. Dist. Ct. App. 2005) 10

State v. Watkins,
827 S.W.2d 293 (Tenn. 1992) 13

State v. Weathers,
506 S.E.2d 698 (Ga. Ct. App. 1998) 11

State v. Wheaton,
825 P.2d 501 (Idaho 1992)..... 11

State v. White,
489 N.W.2d 792 (Minn. 1992) 12

State v. Winston,
295 S.E.2d 46 (W. Va. 1982) 14

Stout v. State,
898 S.W.2d 457 (Ark. 1995) 14

Thornton v. United States,
541 U.S. 615 (2004) 5, 16, 17, 28

Traylor v. State,
458 A.2d 1170 (Del. 1983) 11

United States v. Barnes,
374 F.3d 601 (8th Cir. 2004) 8

United States v. Cotton,
751 F.2d 1146 (10th Cir. 1985) 9

United States v. Doward,
41 F.3d 789 (1st Cir. 1994)..... 27

United States v. Edwards,
415 U.S. 800 (1974) 22

United States v. Gaudin,
515 U.S. 506 (1995) 18

United States v. Herndon,
393 F.3d 665 (6th Cir.) 9

United States v. Hrasky,
453 F.3d 1099 (8th Cir. 2006) 9

United States v. Karlin,
852 F.2d 968 (7th Cir. 1988) 9

United States v. Lyons,
706 F.2d 321 (D.C. Cir. 1983) 28

United States v. Mapp,
476 F.3d 1012 (D.C. Cir. 2007) 9

United States v. McConney,
728 F.2d 1195 (9th Cir. 1984) 29

United States v. McCrady,
774 F.2d 868 (8th Cir. 1985) 9

United States v. Osife,
398 F.3d 1143 (9th Cir. 2005) 9

United States v. Pittman,
411 F.3d 813 20

United States v. Robinson,
414 U.S. 218 (1973) .....passim

United States v. Ross,
456 U.S. 798 (1982) 22

United States v. Sanders,
994 F.2d 200 (5th Cir. 1993) 29

United States v. Weaver,
433 F.3d 1104 (9th Cir. 2006) 9

United States v. White,
871 F.2d 41 (6th Cir. 1989) 8

Vasquez v. Hillery,
474 U.S. 254 (1986) 6, 20

Vasquez v. State,
990 P.2d 476 (Wyo. 1999) 14

Walker v. Armco Steel Corp.,
446 U.S. 740 (1980) 17

Washington v. Chrisman,
455 U.S. 1 (1982) 25

Welch v. Texas Dep't of Highways & Pub. Transp.,
483 U.S. 468 (1987) 17

Wyoming v. Houghton,
526 U.S. 295 (1999) 20, 21

MISCELLANEOUS

Wayne R. LaFave, "*Case-By-Case Adjudication" Versus "Standardized Procedures": The* Robinson *Dilemma*, 1974, S. CT. REV. 127 4

Richard A. Posner, ECONOMIC ANALYSIS OF LAW 747-48 (5th Ed. 1998) 21

STATEMENT OF AMICI INTEREST

The Amici States have a direct interest in this case because by failing to apply the bright-line test from this Court's *Belton* and *Thornton* cases, the Arizona Supreme Court effectively cast into doubt the actions of law enforcement in searching vehicles incident to arrest pursuant to the *Belton* rule. The ruling of the Arizona Supreme Court casts doubt on an important bright-line test that courts and officers in the field have relied upon since its inception twenty-seven years ago. The Amici States possess strong interests in ensuring that the workable and important *Belton* rule remains the law of the land, because searches of vehicles incident to contemporaneous arrests of often dangerous suspects are necessary to prevent the kind of "second guessing" by police officers that could threaten the safety of officers and the public, lead to the escape of arrestees, and result in the destruction of critical evidence in the fight against crime.

SUMMARY OF ARGUMENT

This Court should reaffirm the *Belton* rule and hold that it should have been applied to Gant's case. The doctrine of stare decisis dictates that the Court should continue to adhere to the bright-line *Belton* rule, which has been in existence for twenty-seven years. Courts and law enforcement officers across the country have relied on this rule since its inception, finding that every arrest involving a mobile vehicle presents inherent risks that justify a contemporaneous, warrantless search of the vehicle incident to the arrest. The Court adopted this straightforward rule in *Belton,* and it has proven

workable ever since. Moreover, *Belton* was reaffirmed by this Court in 2004. There are no special justifications warranting a change to a case-by-case approach, which would require officers to second guess themselves in making quick, ad hoc decisions in the field. *Belton* should remain the law of the land.

In the area of police procedure, the need for clear, workable rules is particularly paramount. *Belton*'s allowance of searches incident to arrest has protected officers and the public in a wide array of fast-moving and hazardous arrest situations involving automobiles. There should be no need to analyze the particulars of every arrest that occurs in public, on the side of the road, and involving a mobile vehicle; instead, even if it is later determined that the arrestees were secured and posed no danger, the need to search vehicles contemporaneous with such inherently dangerous arrests remains a vital tool in protecting the public and fighting crime.

Protection of law enforcement and the public, as well as the preservation of easily destructible evidence, makes *Belton's* clear-cut rule crucial for law enforcement. Officers need the rule's guidance; without it they would be subject to a host of dangerous situations in making on-the-spot determinations in every arrest involving a vehicle. Courts would then be placed in a position of determining, after the fact, whether each search of an automobile was reasonable under the Fourth Amendment. Such an ad-hoc approach is neither necessary nor desirable.

Lastly, the need for continuance of the *Belton* rule is borne out by statistics showing rising violent crime rates, deaths and assaults involving officers while making arrests involving vehicles, as well as the continued rise in gang activity and drug trafficking. These acutely dangerous criminal activities make warrantless searches of vehicles incident to arrests an immensely important part of law enforcement's arsenal to protect the public and preserve evidence. Without the bright-line *Belton* rule, the effectiveness of law enforcement efforts will be diminished and the potential for volatile arrest situations to end in tragedy will increase. This Court should therefore reaffirm the *Belton* rule and overrule the Arizona Supreme Court's reasoning that the rule did not apply to Gant's case.

ARGUMENT

I. PRINCIPLES OF STARE DECISIS NECESSITATE THIS COURT'S CONTINUED ADHERENCE TO THE RULE FORMULATED IN *BELTON* AND REAFFIRMED IN *THORNTON*, AND THE CONTINUED APPLICATION OF THE RULE IN CIRCUMSTANCES SUCH AS GANT'S.

In *New York v. Belton*, 453 U.S. 454 (1981), this Court announced a workable, bright-line rule that has inured to the benefit of law enforcement in its fight against violent crime for twenty-seven years. It has also provided stability and predictability in the federal and state judiciaries, which are called upon to determine the lawfulness of vehicle searches.

The Court reasoned that risks to officer safety, as well as the potential destruction of evidence, are inherent in every arrest that involves a moving vehicle. The Court therefore held that "when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." *Id.* at 460. In short, due to the inherent risks during an arrest, a contemporaneous, warrantless search of an automobile incident to the arrest of a recent occupant of that vehicle is *per se* justified. Since the announcement of this common-sense, important rule, law enforcement and courts from across the United States have relied upon it to protect officers in the field and the public from potentially dangerous criminals.

In *Belton*, the Court specifically intended to create a "straightforward rule, easily applied, and predictably enforced." *Id.* at 459. This exposition of a bright-line rule was in keeping with the Court's reasoning on many occasions that a bright-line rule, especially in the Fourth Amendment context, is important so that the rule can be "readily applicable by the police in the context of the law enforcement activities in which they are necessarily engaged." *Id.* at 458 (quoting Wayne R. LaFave, "*Case-By-Case Adjudication" Versus "Standardized Procedures": The* Robinson *Dilemma*, 1974 S. CT. REV. 127, 141). As such, constitutional rules affecting police procedure should not hinge upon a "highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions." *Id.*; *see also*

Thornton v. United States, 541 U.S. 615, 623 (2004) (rejecting "subjective and highly fact specific" assessments that "would require precisely the sort of ad hoc determinations on the part of officers in the field and reviewing courts that *Belton* sought to avoid"); *Michigan v. Long*, 463 U.S. 1032, 1050 n.14 (1983) (stating that *Belton* created a bright-line rule authorizing a search whenever an officer makes a custodial arrest); *United States v. Robinson*, 414 U.S. 218, 235 (1973) (holding that the arrest itself establishes bright-line authority for police to search).

By ignoring this bright-line rule in favor of requiring field officers to determine case-by-case in every arrest whether a warrantless search is actually justified due to safety concerns, the Arizona Supreme Court not only disrupted longstanding precedent and police practice, but also put officers and the public at risk when arrests are made involving easily-mobile vehicles.[1] Based on longstanding practice and reliance, as well as other principles of stare decisis, this Court should reaffirm the clear *Belton* rule and hold that a recent vehicle occupant's arrest inherently justifies a contemporaneous search of the moving vehicle incident to that arrest.

---

[1] The dissent in the Arizona Court of Appeals decision noted that the majority "single-handedly discard[ed] the bright-line rule" laid out in *Belton*. Pet. App. B. at 19, ¶ 22. The dissent argued that the majority's decision "returned Arizona law enforcement officers 'to the uncertain and dangerous environment' in which, facing a highly volatile situation, they must calculate the probability that weapons or destructible evidence may be involved and estimate what items were or were not within the arrestee's reach at any particular point." *Id.* at 22, ¶25; Pet. Brief, pg. 8 (citations omitted).

A. No Special Justification Exists for Disregarding the Principles of Stare Decisis and Overruling the Bright-Line *Belton* Rule.

Stare decisis "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne v. Tennessee*, 501 U.S. 808, 827 (1991). This Court has stated that while its precedent is not "sacrosanct," overruling it does require "special justification." *Patterson v. McLean Credit Union*, 491 U.S. 164, 172 (1989); *see also Vasquez v. Hillery*, 474 U.S. 254, 266 (1986) ("any detours from the straight path of stare decisis in our past have occurred for articulable reasons"). In this case, no special justification exists for overruling the *Belton* rule; rather, solid justifications exist for preserving its bright-line approach.

Considerations in this Court's decisions overruling precedent have included factors such as: the new rule's necessity and propriety; changes in judicial and legislative doctrines since the previous decision; the irreconcilability between a later law and competing legal doctrines or policies; the previous decision's creation of direct obstacles to the realization of important objectives embodied in other laws; whether the precedent is outdated; whether the rule is inconsistent with a sense of justice or social welfare; and whether the decision has proven

unworkable. *See Patterson*, 491 U.S. at 173-74[2]; *see also Payne*, 501 U.S. at 842 (Souter, J., concurring) (reasoning that stare decisis "carries such persuasive force that we have always required a departure from precedent to be supported by some 'special justification'"). Applying these factors to the *Belton* rule, considerations such as the bright-line application of this rule in most jurisdictions and the unique requirements of law enforcement procedure necessitate the conclusion that stare decisis should protect the continued application of the rule.

1. Other courts in the Amici States have relied on the bright-line, workable rule announced in *Belton*.

As noted by Petitioner, the decision below conflicts with decisions in a host of federal circuit courts, as well as a large number of state courts that

---

[2] While these considerations were set out in *Patterson*, a case in which the Court considered the application of stare decisis in the statutory interpretation context, they are used in applications of stare decisis in constitutional law cases as well. *See Randall v. Sorrell*, 548 U.S. 230, 244 (2006); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 855 (1992). In *Casey,* for example, the Court discussed the "prudential and pragmatic considerations" to determine whether adherence to precedent is favored, including whether: (1) the rule is workable; (2) the rule is subject "to a kind of reliance that would lend a special hardship" to its overruling and "add inequity to the cost of repudiation;" (3) the law has developed in a way that leaves the rule "a remnant of abandoned doctrine;" and (4) "facts have so changed[] or come to be seen so differently" that the rule no longer has "significant application or justification." *Casey*, 505 U.S. at 854–55.

have come to rely upon the clear, bright-line rule announced in *Belton*. The Arizona Supreme Court recognized that "most other courts," when presented with the same circumstances, have found the *Belton* rule controlling. *State v. Gant*, 162 P.3d 640, 645 (Ariz. 2007). The bright-line application of the *Belton* rule by nearly every court to have considered it demonstrates that stare decisis considerations support this Court's continued adherence to this precedent. A new rule would not be necessary or proper, because the *Belton* rule is not irreconcilable with other rules and is not unworkable, does not conflict with an arrestee's limited Fourth Amendment rights under specific circumstances, and is not outdated. For these reasons, the workable *Belton* rule should be reaffirmed by this Court.

Courts across the country have adhered to the *Belton* rule since its inception in 1981. First, Federal Courts of Appeals that have considered the issue in *Gant* have held that a search is valid under *Belton* regardless of whether the arrestee is handcuffed or secured in a patrol car. *See, e.g.*, *United States v. Barnes*, 374 F.3d 601, 604 (8th Cir. 2004) ("The lawfulness of the search does not depend on whether the occupant was *actually capable* of reaching the area during the course of the police encounter."). In other words, the bright-line rule announced in *Belton* "did away with [the] fact-specific inquiry into reachability." *Id.*; *see also Northrop v. Trippett*, 265 F.3d 372, 379 (6th Cir. 2001) ("So long as the defendant had the item within his immediate control near the time of his arrest, the item remains subject to a search incident to an arrest."); *United States v. White*, 871 F.2d 41, 44 (6th Cir. 1989) (holding that

"even after the arrestee has been separated from his vehicle and is no longer within reach of the vehicle or its contents, the *Belton* rule . . . applies, and such a search is valid."); *United States v. Karlin*, 852 F.2d 968, 972 (7th Cir. 1988) (upholding search incident to arrest where defendant was arrested, handcuffed, patted down, and placed in squad car); *United States v. McCrady*, 774 F.2d 868, 872 (8th Cir. 1985) (upholding search of locked glove compartment after defendant arrested and placed in patrol car as a search incident to arrest); *United States v. Cotton*, 751 F.2d 1146, 1148 (10th Cir. 1985) (finding that *Belton* does not require arresting officer to undergo a detailed analysis at the time of arrest to determine whether the handcuffed arrestee could reach into the car to seize an item within it).[3]

Second, in Florida (as in other states, discussed below), the *Belton* rule has become enshrined as part of state law. Shortly after *Belton*, Florida's Second District Court of Appeal stated:

> [W]e believe the Supreme Court in the *Belton* case has foreclosed the option of

---

[3] Federal Courts of Appeals have also upheld searches under *Belton* in situations in which the arrestee has been handcuffed and placed in a patrol car without specifically addressing the issue. *See United States v. Mapp*, 476 F.3d 1012, 1014 (D.C. Cir. 2007) (upholding search of arrestee's car conducted after he had been handcuffed and placed in patrol car); *United States v. Hrasky*, 453 F.3d 1099, 1100, 1103 (8th Cir. 2006) (same); *United States v. Weaver*, 433 F.3d 1104, 1107 (9th Cir. 2006) (same); *United States v. Osife*, 398 F.3d 1143, 1144, 1146 (9th Cir. 2005) (same); *United States v. Herndon*, 393 F.3d 665, 668 (6th Cir.), *vacated on other grounds*, 544 U.S. 1029 (2005), (same).

> determining on a case-by-case basis whether the interior of an automobile is within the scope of a search incident to arrest. We read *Belton* as establishing a rule applicable to all cases involving the arrest of a recent occupant of an automobile, without regard to the facts in the particular case.

Chapas v. State, 404 So. 2d 1102, 1103-04 (Fla. Dist. Ct. App. 1981). Since *Chapas*, Florida courts have almost uniformly applied the *Belton* rule in a bright-line manner, refusing to consider the facts of the arrest in determining whether vehicle searches are constitutional. *See, e.g., State v. Waller*, 918 So. 2d 363, 366-67 (Fla. Dist. Ct. App. 2005) (reasoning that "courts generally have approved a vehicle search incident to a lawful arrest as a matter of course . . . because such a practice provides much more of a bright-line rule than requiring officers to consider, on a case-by-case basis, whether there is truly a risk to safety or evidence"); *State v. Saufley*, 574 So. 2d 1207, 1209 (Fla. Dist. Ct. App. 1991) (finding that under *Belton*, "[t]he fact that the search occurred after Saufley was placed in the patrol car and approximately 2-3 minutes after the arrest does not affect" its validity); *State v. McLendon*, 490 So. 2d 1308, 1310 (Fla. Dist. Ct. App. 1986) (refusing to distinguish between arrests of persons in a car from arrests of persons recently vacating the car because it would "severely diminish the purpose of the *Belton* decision"); *State v. Valdes*, 423 So. 2d 944, 944 (Fla. Dist. Ct. App. 1982) (holding that search of vehicle was valid notwithstanding the fact that it occurred after defendant was placed in rear of police cruiser).

The same is true of appellate courts in many other states. The *Belton* rule has been overwhelmingly followed and relied upon across the country. *See, e.g., Gundrum v. State*, 563 So. 2d 27, 29 (Ala. Cr. App. 1990) (holding that items were properly received into evidence at criminal trial even though search of car occurred after defendant was arrested and placed in patrol car); *People v. Carter*, 117 P.3d 476 (Cal. 2005) (reasoning that even if defendant had some reasonable expectation of privacy in stolen vehicle, because detention and arrest were lawful, application of *Belton* rule validated search of car occurring while defendant was in patrol vehicle); *People v. Kirk*, 103 P.3d 918, 922 (Colo. 2005) (holding that authority of officers to search a vehicle incident to occupant's arrest is automatic and may be conducted even after suspect has been removed, placed away from the vehicle, and is safely in police custody); *Traylor v. State*, 458 A.2d 1170, 1174-75 (Del. 1983) (stating that because search was incident to lawful arrest, it made no difference that accused was unable to reach items in car at time of search); *State v. Weathers*, 506 S.E.2d 698, 699 (Ga. Ct. App. 1998) (holding that arrest of recent vehicle occupant validates search, and that conclusion is not affected by fact that occupant was sitting in patrol car during search); *State v. Wheaton*, 825 P.2d 501, 503 (Idaho 1992) (upholding search of car incident to arrest where defendant had been arrested, handcuffed, and placed in patrol car); *Black v. State*, 810 N.E.2d 713, 716 (Ind. 2004) (holding that search after defendant exited car and was handcuffed was valid under *Belton*); *State v. Garcia*, 461 N.W.2d 460, 464 (Iowa 1982) (holding that officers could search the car incident to arrest

while defendant was in patrol car); *Rainey v. Commonwealth*, 197 S.W.3d 89, 95 (Ky. 2006) (affirming *Belton* search when defendant "was so far from his vehicle that it was unlikely he could have accessed it"); *State v. Laplante*, 534 A.2d 959, 963 (Me. 1987) (holding that even when occupant is outside of car, if defendant was lawfully arrested, search is valid under *Belton*); *State v. Fernon*, 754 A.2d 463, 472 (Md. Ct. Spec. App. 2000) (applying *Belton* and holding that "[i]f a contemporaneous vehicle search is constitutional in the absence of security measures, it ought to be lawful when reasonable security measures are promptly utilized before the search is executed."); *State v. White*, 489 N.W.2d 792, 795-96 (Minn. 1992) ("the *Belton* rule is a 'bright line' rule . . . [and] the fact that the defendant is in the squad car at the time the search occurs is irrelevant because *Belton* expressly foreclosed the need for a case-by-case determination of the arrestee's control of the car."); *State v. Harvey*, 648 S.W.2d 87, 89 (Mo. 1983) (reasoning that securing of defendant did not invalidate search of car incident to arrest and that *Belton* should not be confined to its specific facts because a narrow rule would flout the Court's purpose of fashioning a workable rule); *State v. Pittman*, 556 N.W.2d 276, 283 (Neb. Ct. App. 1996) (stating that search incident to arrest after defendant placed in police vehicle is valid under *Belton*, because search conducted within area of arrestee's immediate control at time of arrest); *State v. Miskolczi*, 465 A.2d 919, 921 (N.H. 1983) (finding search valid after defendant was arrested, searched, handcuffed, and placed in rear of police vehicle); *State v. Cooper*, 286 S.E.2d 102, 104 (N.C. 1982) ("The fact that defendant

in this case was sitting in a police vehicle [when the car was searched] instead of standing on the street under an officer's supervision fails to remove the factual setting from the scope of *Belton*."); *State v. Hensel*, 417 N.W.2d 849, 852–53 (N.D. 1988) (holding that search of automobile conducted after defendant was arrested, handcuffed, and placed in police car was valid search incident to arrest); *Nealy v. State*, 636 P.2d 378, 381 (Okla. Crim. App. 1981) (stating that having made a proper arrest of the defendant in the truck, police seizure and subsequent search of sack from under driver's seat was valid under *Belton*); *State v. Watkins*, 827 S.W.2d 293, 296 (Tenn. 1992) (holding that police may conduct a search of the passenger area of a car incident to an arrest even when the arrested person is neutralized in back seat of a squad car under *Belton*); *State v. Garcia*, 801 S.W.2d 137, 141 (Tex. Crim. App. 1990) (finding that search incident to arrest is valid even though defendant is handcuffed and placed in back of police vehicle because *Belton* rule is bright line); *State v. Giron*, 943 P.2d 1114, 1120 (Utah Ct. App. 1997) (reasoning that *Belton*'s timing requirement requires only a routine, continuous sequence of events occurring during same period of time as arrest and thus search was valid though arrestee was handcuffed and no longer in car); *Glasco v. Commonwealth*, 513 S.E.2d 137, 140 (Va. 1999) (stating that defendant's location in back of police cruiser when his car was searched does not alter the validity of the search under *Belton*); *State v. Stroud*, 720 P.2d 436 (Wash. 1986) (stating that under *Belton*, during the time immediately subsequent to suspect being arrested, handcuffed and placed in patrol car, officers are permitted to search passenger

compartment and all unlocked items in a vehicle for weapons or destructible evidence); *State v. Winston*, 295 S.E.2d 46 (W. Va. 1982) (holding that *Belton* search is valid even if defendant is handcuffed or otherwise secured away from the inside of his vehicle); *Vasquez v. State*, 990 P.2d 476, 482 (Wyo. 1999) (holding that *Belton* search is proper "although Vasquez had been removed from the vehicle, handcuffed, and placed in a patrol car"). There is nothing less than overwhelming adherence to the bright-line *Belton* rule among state courts since its 1981 inception.

Third, it is important to note that several state courts have also applied *Belton's* bright-line rule to their own state constitutional search and seizure provisions. *See, e.g., Stout v. State*, 898 S.W.2d 457, 460 (Ark. 1995) ("*Belton* has provided a practical and workable rule for fourteen years, and . . . [c]onsequently, we choose to continue to interpret 'unreasonable search' in Article 2, section 15 of the Constitution of Arkansas in the same manner the Supreme Court interprets the Fourth Amendment to the Constitution of the United States."); *State v. Charpentier*, 962 P.2d 1033, 1037 (Idaho 1998) (applying *Belton* to interpretation of Idaho and federal constitutional search and seizure protections); *State v. Murrell*, 764 N.E.2d 986, 993 (Ohio 2002) (applying *Belton*'s bright-line rule to state and federal constitutional provisions and holding that search was valid when defendant was arrested, handcuffed, and placed in backseat).

In Kansas, for example, the state legislature recently amended its own statutes to reflect the

workability of the *Belton* rule. In that state, searches incident to arrest were governed by a statute requiring that the search be justified as reasonable for one of three purposes: protecting the officer from attack, preventing the arrestee from escaping, or discovering evidence of the crime for which the vehicle occupant was being arrested. *See State v. Anderson*, 910 P.2d 180, 184 (Kan. 1996). The Kansas Supreme Court therefore rejected the State's argument that a search was valid while the driver and passenger were out of the car and there was no suspicion that evidence of the crime for which they were arrested was in the car. *See id.*

The Kansas statute was amended in 2006, however, in recognition of a "desire [for law enforcement] to be able to operate as allowed by the United States Supreme Court in [*Belton*], to search an arrestee and the immediately surrounding area once a lawful custodial arrest has been made." *See State v. Henning*, 171 P.3d 660, 665 (Kan. Ct. App. 2007). The statute was rewritten such that an officer could search a vehicle incident to an occupant's arrest for the purpose of discovering evidence of *a* crime; in other words, not necessarily the crime for which the person was arrested. *See id.* at 669. The appellate court concluded that the search of the automobile while one of the defendants was handcuffed, and for no purpose other than to search for evidence of a crime, was valid. *See id.*[4]

---

[4] It is also true, however, that some states have not applied the *Belton* rule to their state constitution search and seizure provisions. *See Pierce v. State*, 171 P.3d 525, 530 (Wyo. 2007); *State v. Eckel*, 888 A.2d 1266 (N.J. 2006); *State v. Gomez*, 932 (Continued…)

In short, the overwhelming and near uniform application of the *Belton* rule as a bright-line standard demonstrates that change is neither necessary nor desirable. The majority of changes in judicial and legislative doctrine have been toward the *Belton* rule and not a recession from it. It should be reaffirmed by this Court.

2. Changed circumstances do not justify reversing the workable *Belton* rule, reaffirmed by this Court in *Thornton*.

As shown, the *Belton* rule is decidedly not outdated, given its consistent bright-line application in many state and federal courts. This Court also recently reaffirmed the *Belton* rule in *Thornton v. United States*, 541 U.S. 615 (2004). Petitioner notes that *Thornton* presented virtually indistinguishable facts from Gant's case, and the Court once again read the longstanding rule to mean that police do not have to assess the exigencies of every arrest prior to deciding whether to conduct a warrantless search. As such, circumstances have continued to justify and require application of the important *Belton* rule.

P.2d 1 (N.M. 1997); *Commonwealth v. White*, 669 A.2d 896, 902 (Pa. 1995); *State v. Blasich*, 541 N.E.2d 40 (N.Y. 1989); *State v. Stroud*, 720 P.2d 436, 441 (Wash. 1986); *State v. Brody*, 686 P.2d 451 (Ore. Ct. App. 1984); *Commonwealth v. Toole*, 448 N.E.2d 1264, 1267 (Mass. 1983). These cases are noteworthy because they demonstrate that states remain free to set the requirements for a vehicle search incident to an arrest at whatever threshold they find proper under their state constitutions.

The Court in *Thornton* reaffirmed the need for a clear rule that can be "readily understood" by police officers, and not dependent on differing circumstances. 541 U.S. at 623. The Court reiterated that "[o]nce an officer determines that there is probable cause to make an arrest, it is reasonable to allow officers to ensure their safety and to preserve evidence by searching the entire passenger compartment." *Id.* As noted by Petitioner, this Court also cited *Belton* in 2001 as demonstrating the importance of bright-line rules in the Fourth Amendment area. *See Atwater v. City of Lago Vista*, 532 U.S. 318, 347 (2001). These cases demonstrate the firm placement of *Belton* within the Court's Fourth Amendment jurisprudence, strengthening the stare decisis argument even further. *See Walker v. Armco Steel Corp.*, 446 U.S. 740, 749 (1980) ("A litigant who in effect asks [the Court] to reconsider not one but two prior decisions bears a heavy burden of supporting such a change in our jurisprudence."). In other words, this Court has continuously seen the need for a clear and important rule in this area. *See Welch v. Texas Dep't of Highways & Pub. Transp.*, 483 U.S. 468, 494 (1987) (refusing to overrule the Court's "long and unbroken series of precedents" that would require reconsideration of a "number of other major decisions").

Just as important, not only does the *Belton* rule remain consistent with developments in search and seizure law, it is also a natural offspring from decades of this Court's Fourth Amendment law. As noted, search and seizure jurisprudence has long recognized the importance of "single, familiar standard[s]" for valid searches. *Belton*, 453 U.S. at

458 (quoting *Dunaway v. New York*, 442 U.S. 200, 213-14 (1979)). The *Belton* Court specifically cited to *United States v. Robinson*, 414 U.S. 218, 235 (1973), in which the Court held that the search of a person incident to an arrest was reasonable and was not subject to a case-by-case analysis of the circumstances of the arrest and search. The decisions in *Dunaway*, *Robinson*, and *Chimel v. California*, 395 U.S. 752 (1969), the case from which *Belton* evolved, have not been overruled. *Belton*'s bright-line rule therefore remains a consistent and vital part of search and seizure jurisprudence, and it is interwoven with several of the Court's well-established precedents. *Cf. Agostini v. Felton*, 521 U.S. 203, 236 (1997) (explaining that precedent was not in line with recent developments in First Amendment law); *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 66 (1996) (decision overruled that had been a "solitary departure from established law"); *United States v. Gaudin*, 515 U.S. 506, 520 (1995) (overruling case that relied on cases which had since been overruled). The *Belton* rule has clearly stood the test of time and should remain the law of the land.

3. Particularly in the area of police procedure, this Court should not overrule constitutional precedent that promotes the social welfare and has proven workable.

Although this Court has stated that decisions involving constitutional interpretation are

vulnerable to reversal, *see Payne*, 501 U.S. at 842,[5] special consideration should be given to precedent in the constitutional law area affecting police procedure. *See Belton*, 453 U.S. at 459-60 ("When a person cannot know how a court will apply a settled principle to a recurring factual situation, that person cannot know the scope of his constitutional protection, nor can a policeman know the scope of his authority."). The importance of *Belton* continues to be its ease of application to otherwise complex, widely-varied and dangerous situations faced by arresting officers.

It is vitally important that officers have consistent and readily ascertainable rules to follow in making arrests. For example, this Court recently reaffirmed the longstanding rule in *Miranda v. Arizona*, 384 U.S. 436 (1966), which requires that police officers verbally warn accused individuals of their constitutional rights upon arrest. *See Dickerson v. United States*, 530 U.S. 428, 443 (2000). The Court noted in refusing to overrule *Miranda* that it "has become embedded in routine police practice to the point where the warnings have become part of our national culture." *Id.; see also Mitchell v. United States,* 526 U.S. 314, 331-32 (1999) (Scalia, J., dissenting) (describing a rule's "wide acceptance in the legal culture" as "adequate reason not to overrule" it).

---

[5] *But see Arizona v. Rumsey*, 467 U.S. 203, 212 (1984) ("Although adherence to precedent is not rigidly required in constitutional cases, any departure from the doctrine of stare decisis demands special justification.").

Similarly, it would be imprudent for this Court to overrule precedent relied upon by police officers across the nation for the previous twenty-seven years. Stare decisis "permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact." *Vasquez v. Hillery*, 474 U.S. 254, 265-66 (1986). At no point is consistency and clarity of procedure more important to the integrity of the legal system than in the interactions between citizens and police officers during an arrest. *See Atwater* 532 U.S. at 347 (reasoning that the Fourth Amendment "has to be applied on the spur (and in the heat) of the moment," requiring rules that are "sufficiently clear and simple to be applied with a fair prospect of surviving judicial second-guessing months and years after an arrest or search is made."); *United States v. Pittman*, 411 F.3d 813, 816 (7th Cir. 2005) ("Police shouldn't have to carry well-thumbed copies of the multivolume LaFave treatise on search and seizure with them wherever they go.").

In addition, whether a search is reasonable under the Fourth Amendment requires "assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests." *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999). As described by Judge Richard A. Posner, the reasonableness of a search can be analyzed by using the Judge Learned

Hand formula, weighing the social costs against the social benefits.[6] Here, allowing vehicle searches pursuant to the bright-line *Belton* rule comports with this balance: individuals have a lesser expectation of privacy in moving vehicles, and the social benefits from searching vehicles incident to arrest far outweigh any cost to individual privacy under such circumstances.

The Court's categorical recognition of automobile searches incident to arrest dovetails with its reasoning in many cases that individuals have a lesser expectation of privacy in automobiles. The Amici States agree with Petitioner that this lessened privacy interest must give way to the need to protect the arresting officers and preserve evidence of a crime. It is by now axiomatic that an individual has a reduced expectation of privacy in the contents of his automobile. *See*, *e.g.*, *Houghton*, 526 U.S. at 303 (reasoning that automobile searches intrude much less upon personal privacy and dignity than searches

---

[6] *See* Richard A. Posner, ECONOMIC ANALYSIS OF LAW 747-48 (5th Ed. 1998). Judge Posner describes the Hand formula as demonstrating reasonableness of a search "if the cost of the search in impaired privacy (*B*) is less than the probability (*P*) that without the search the target of the search cannot be convicted, multiplied by the social loss (*L*) of not convicting him." *Id.* at 748. He notes that in courts' analysis, "[a] minimally intrusive search (i.e., low *B*) – a stop-and-frisk or pat-down – is permissible on a lower *P* than a search of the home or an arrest." *Id.* Moreover, "[i]if a search is necessary to prevent the imminent repetition of a crime, which is one of the things that can make *L* large, a lesser showing of probable cause will suffice." *Id.* Judge Posner concludes that "the more serious the crime, the less probable cause the police should be required to demonstrate in order to justify a search." *Id.*

of persons, in light of the everyday exposure of automobiles and their contents to public view, police regulation, and potential involvement in traffic accidents); *California v. Carney*, 471 U.S. 386, 390–92 (1985) (holding that "ready mobility" and pervasive regulation result in a reduced expectation of privacy in motor vehicles); *Almeida-Sanchez v. United States*, 413 U.S. 266, 279 (1973) (holding that automobile searches are "far less intrusive on the rights protected by the Fourth Amendment than the search of one's person or of a building"). Moreover, this already reduced expectation of privacy is "diminished further when the occupants are placed under custodial arrest." *Robbins v. California*, 453 U.S. 420, 431 (1981) (Powell, J., concurring) (citations omitted), *overruled on other grounds by United States v. Ross*, 456 U.S. 798 (1982); *see also United States v. Edwards*, 415 U.S. 800, 808–09 (1974). As such, *Belton's* bright-line approach properly balances the vital needs of law enforcement and public safety with the reduced expectation of privacy that arrestees like Gant have in vehicles upon arrest. The rule protects police and the public during inherently dangerous arrest situations involving automobiles – places where suspects presumptively have reduced expectations of privacy.

As further evidence of *Belton's* solid foundation, it is noteworthy that state courts have pointed to important and continuing safety and security concerns as part of their reason for applying the *Belton* rule, even in situations when the search occurs while the defendant is handcuffed and secured in the back of a police car. *See, e.g., Fernon*, 754 A.2d at 472 (reasoning that "[i]f a

contemporaneous vehicle search is constitutional in the absence of security measures, it ought to be lawful when reasonable security measures are promptly utilized before the search is executed."). The Maryland Court of Appeals, for example, expressed a desire to encourage the use of safety procedures through the continued application of the bright-line rule. *See id.*[7]

The beauty of the *Belton* rule is its simplicity, and the rule's common-sense approach justifies preserving it now. That law enforcement officers are able to safely and quickly perform their duties of protecting the public and preserving evidence is of paramount importance.[8] Given these concerns, when contrasted with an arrestee's reduced privacy expectation after a vehicle stop, it is critical that this

---

[7] These safety concerns are discussed in greater detail in the next section.

[8] Petitioner also appropriately notes that "[o]verruling *Belton* would mean extensive retraining for police agencies across the United States in arrest and search procedures, retraining that requires officers to finely and carefully analyze the circumstances of an arrest to determine whether the situation is dangerous or whether the arrestee or a confederate . . . might reach into the passenger compartment for a weapon or to destroy evidence." Pet. Brief, pg. 39. It is also important to note that the Arizona Supreme Court's case-by-case approach would generate numerous "mini-trials" on the objective and subjective knowledge of police officers that may or may not justify the search in any given situation. Such "mini-trials" would not only result in added expenditures of time and resources in the courts, they likely would result in inconsistent rulings across the country and increase confusion among law enforcement officers in the field.

Court not overrule its precedent in *Belton* in its consideration of Gant's case.

II. PROTECTION OF LAW ENFORCEMENT AND THE PUBLIC MAKES CONTINUED ADHERENCE TO THE *BELTON* RULE VITALLY IMPORTANT.

A. Requiring Officers to Analyze the Particulars of Every Situation When Making an Arrest Necessarily Threatens the Safety of Officers and the Public, and Inhibits Law Enforcement's Ability to Effectively Fight Crime.

In *Belton,* the Court specifically stated that the rule is intended "to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront." *Belton,* 453 U.S. at 458 (quoting *Dunaway v. New York,* 442 U.S. 200, 213-14 (1979)). As such, the need for continuance of the clear *Belton* rule is crucial for law enforcement, both for officers' own protection and the protection of the public in law enforcement's efforts to remove dangerous criminals from the streets. The Amici States agree with Petitioner that by requiring police to engage in a case-by-case analysis of every arrest involving a moving vehicle, the Arizona court creates uncertainty, prevents police from effecting safe arrests, and creates a disincentive to safely secure a suspect prior to conducting a moving vehicle search incident to arrest.

There is no doubt that a hazardous Pandora's Box would be opened if a new rule were adopted requiring officers to make ad hoc determinations whether a search incident to arrest is justified, and requiring courts to adjudicate every case based upon specific circumstances surrounding the arrest. *See State v. Gant*, 162 P.3d 640, 647-48 (Ariz. 2007) (Bales, J., dissenting). The result of such an unpredictable rule would be additional threats to safety during the already dangerous apprehension of suspects from moving vehicles, as well as the release of potentially dangerous suspects should courts determine after-the-fact that the search was unjustified based on specific circumstances. Such an unpredictable rule is wholly undesirable. Instead, because *all* moving vehicle arrests involve some sort of danger to the police or the public, the *Belton* rule should continue to justify all searches made incident to such arrests, regardless of the specific threats in each situation.

Belton's bright-line rule presumptively allows searches of passenger compartments incident to arrest in the name of safety, providing clear guidance to officers and respecting the exigencies of work on the streets. As noted by this Court, all arrests, and especially those involving automobiles, are dangerous to officers and the public at large. *See, e.g., Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977) (arresting automobile occupants presents an "inordinate risk" for officers); *Robinson*, 414 U.S. at 234 n.5 ("The danger to the police officer flows from the fact of the arrest, and its attendant proximity, stress, and uncertainty"); *see also Washington v. Chrisman*, 455 U.S. 1, 7 (1982) ("Every arrest must

be presumed to present a risk of danger to the arresting officer."). Moreover, the Court noted in *Robinson* that the decision to search a person or vehicle incident to arrest is "necessarily a quick ad hoc judgment." *Robinson*, 414 U.S. at 235.

In essence, there is a zone of danger that surrounds every arrest made in public involving a moving vehicle. Police officers face a zone of physical danger from possible cohorts and the public in the area surrounding the arrest. They also face a temporal zone of danger, in that decisions for safety and security must be made quickly. Gant's case is a prime example, as the officers involved testified that they had safety concerns *even after the suspects were in custody*, due to the unknown circumstances involving the home and the immediate area. Petitioner notes that Officer Griffith was concerned because he and two other officers had three persons in custody, and as such the search was conducted for "officer safety reasons." Pet. Brief, pg. 6. These concerns persisted even after handcuffing Gant and his cohorts because officers still had not accounted for the resident and owner of the home. *Id.* Officer Griffith testified that "strange things" can always happen during arrests, especially in high drug trafficking areas such as the one where Gant was arrested. *See id.* at 6-7. In short, public arrests involving vehicles always present safety concerns and necessitate measures for officer safety, including the searches authorized in *Belton.*

The fact that a vehicle could be towed and stored does not change the mobility of the vehicle, and therefore does not alleviate these safety

concerns. The potential for danger from co-suspects, and the danger that evidence could be removed by suspects or the public, remains in every mobile vehicle situation. *See, e.g., United States v. Doward*, 41 F.3d 789, 790-93 (1st Cir. 1994) (discussing events where suspect's arrest drew a crowd and resulted in suspect's daughter confronting officers); *see also Robinson*, 414 U.S. at 234-35 (reasoning that "[i]t is scarcely open to doubt that the danger to an officer is far greater in the case of the extended exposure which follows the taking of a suspect into custody and transporting him to the police station than in the case of the relatively fleeting contact resulting from the typical *Terry*-type stop."). Simply put, arrests are "rapidly evolving circumstances fraught with unpredictable risks to life and limb." *Doward,* 41 F.3d at 793. Therefore, a contemporaneous search of the vehicle is of utmost importance, otherwise officers would need to guard the vehicle to prevent a suspect's cohorts or other members of the public from tampering with or removing items from the vehicle. *See, e.g., California v. Carney,* 471 U.S. at 393 (reasoning that "[l]ike the automobile in *Carroll*, respondent's motor home was readily mobile," and therefore it could "readily have been moved beyond the reach of the police."). The proximity of an arrestee to the vehicle, whether handcuffed or not, does not change the fact that officers need to search the vehicle to potentially retrieve weapons or other evidence that could be taken by the public.

The *Belton* rule accordingly permits officers to secure the suspect prior to a vehicle search, rather than searching a vehicle for safety reasons *without* such security. Creating this kind of disincentive for

safety is simply undesirable. *See, e.g., New York v. Earl*, 431 U.S. 943, 948-49 (1977) (Burger, J., dissenting) ("Surely, the Constitution does not require police officers to make the unhappy choice between dereliction of duty and risk of death . . . the Fourth Amendment's proscription against unreasonable searches and seizures [does not] require officers . . . to risk their lives needlessly in the performance of their duty."). In addition, abandonment of the rule could in some cases encourage *arrestees* to seek to be handcuffed and secured in order to avoid a presumptive immediate search of the vehicle.

Petitioner correctly points out that *every* arrest is unpredictable, and officers should not have to engage in a detailed on-the-spot analysis to decide whether a suspect could reach a weapon or evidence in the automobile. Instead, "police must act decisively and cannot be expected to make punctilious judgments regarding what is within and what is just beyond the arrestee's grasp." *United States v. Lyons*, 706 F.2d 321, 330 (D.C. Cir. 1983). While there are cases where the suspect is secure and most likely cannot present a safety or evidentiary risk, the Court nonetheless reemphasized in *Thornton* that "[t]he need for a clear rule . . . justifies the sort of generalization which *Belton* enunciated." *Thornton,* 541 U.S. at 622–23. This coincides with the Court's previous observation that a search of a person incident to a lawful arrest, "while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability . . . that weapons or evidence would in fact be found upon the person of

the suspect." *Robinson*, 414 U.S. at 235. Instead, "[a] custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment," and therefore "a search incident to the arrest requires no additional justification." *Id.* In affirming a *Belton* search after the defendant was already placed in a police car and handcuffed, the Maryland Court of Appeals, for example, reasoned that "[i]f a contemporaneous vehicle search is constitutional in the absence of security measures, it ought to be lawful when reasonable security measures are promptly utilized before the search is executed." *State v. Fernon*, 754 A.2d 463, 472 (Md. Ct. Spec. App. 2000). Otherwise, the use of safety procedures would be discouraged. *See id.*

Petitioner is therefore correct in noting that every arrest involves some safety hazard, even if the suspect is handcuffed and secured, and the hazards are magnified when the arrest involves a moving vehicle and takes place in a public area. *See, e.g.*, *Plakas v. Drinski*, 19 F.3d 1143, 1144–45 (7th Cir. 1994) (suspect handcuffed in back seat of squad car escaped from squad car and later confronted police); *United States v. Sanders*, 994 F.2d 200, 210, 210 n.60 (5th Cir. 1993) (citing incidents in which handcuffed arrestees killed police officers). Moreover, there is no doubt that persons under arrest, in stressful situations facing serious consequences, will try things that are, at best, foolhardy. *See, e.g., Cupp v. Murphy*, 412 U.S. 291, 296 (1973) (noting that when a suspect is arrested, he is motivated "to take conspicuous, immediate steps to destroy incriminating evidence."); *United States v. McConney*, 728 F.2d 1195, 1207 (9th Cir. 1984).

This Court should not abandon a rule that protects officers from such erratic and dangerous behavior in every arrest situation involving a moving vehicle, regardless of whether measures are in fact taken to secure the arrested individual. As discussed in the next section, these dangers are magnified as violent crime rates and officer deaths continue to make headlines.

B. Rising Violent Crime Rates and the Threat to Officer Safety Make the Bright-Line Rule Critical to Effectuating Arrests Safely.

Lastly, current law enforcement trends and statistics conclusively demonstrate the need for continued adherence to the bright-line *Belton* rule. As noted by the Petitioner, between 1997 and 2006, 100 officers were feloniously killed during traffic stops, and more than 6,000 officer assaults occurred during traffic stops. Pet. Brief, pg. 24. In Florida, for example, sixteen law enforcement officers were killed in the line of duty in 2007 alone, including eight as a result of gunfire, and seven as a result of vehicle assaults or accidents.[9] Nationally, there have been

[9] The Officer Down Memorial Page, Inc., tracks these statistics nationally and for each individual state. The ODMP is a non-profit organization dedicated to remembering fallen law enforcement officers. *See* The Officer Down Memorial Page, http://www.odmp.org/ (last visited April 24, 2008). In 2007, ODMP statistics show that among the individual states, Florida had the highest number of officers killed in the line of duty in 2007, trailing only the United States Government with seventeen officers killed. *See id.* New York and California were the closest states in terms of number of law enforcement deaths, with thirteen and ten, respectively. *See id.*

twenty-nine deaths in the line of duty as of April 1, 2008, and there were 186 total officer deaths nationally in 2007, including sixty-five by gunfire.[10] These statistics fully support adherence to a rule that allows officers to protect themselves during potentially volatile stops of moving vehicles, while permitting searches of readily-mobile vehicles.

Additionally, the continued rise of particularly dangerous criminal activities, such as gang activity and drug trafficking, makes the need for a bright-line rule all the more apparent. Last year in Florida, the Attorney General initiated a comprehensive and collaborative Statewide Gang Reduction Strategy aimed at reducing such activity in the State, which has seen the largest growth of gangs in recent years in the nation.[11] The Attorney General noted that

---

[10] *See id.* Petitioner cites national crime statistics in noting that "between 1997 and 2006, 133 of the 562 officers feloniously killed were killed during arrest situations." Pet. Brief, pg. 24 (citing FBI U.S. Dep't. of Justice, *Uniform Crime Report: Law Enforcement Officers Killed and Assaulted*, http://www.fbi.gov/ucr/killed/2006/feloniouslykilled.html, Table 19 (2006) (*Uniform Crime Report*); *FBI Uniform Crime Report*, http://www.fbi.gov/ucr/killed/2006/officersassaulted.html, Table 66 (2006)). Notably, 64 of the 100 officers killed during traffic stops between 1997 and 2006 were killed during routine traffic stops. *See id.* at Table 19.

[11] *See* "Attorney General Announces Collaborative Efforts to Develop a Statewide Anti-Gang Strategy," October 25, 2007, *available at* http://myfloridalegal.com/newsrel.nsf/newsreleases/ (last visited April 24, 2008). The Florida Department of Law Enforcement published its 2007 Statewide Gang Survey Results, indicating a high percentage of gang members commit violent crimes, and that police activities in relation to gangs are on the rise. *See* 2007 Statewide Gang Survey Results, Florida (Continued…)

"[t]hese gangs traffic illegal drugs throughout Florida's communities; are involved in an increasing number of violent crimes utilizing firearms; regularly commit acts of violence and threaten public safety; and commit a large number of personal and property crimes."[12] These findings ultimately led to the enactment of proactive anti-gang legislation in the State of Florida.[13] In short, the rise of such mobile and violent criminal activity in Florida and other states poses a highly acute threat to law enforcement and the public.

The increase of such violent activity, which obviously involves the frequent use of moving vehicles, underscores the continued need for the

---

Department of Law Enforcement, October 2007, *available at* http://myfloridalegal.com (last visited April 24, 2008).

[12] *See id.*; *see also* "Attorney General McCollum Launches Gang Reduction Strategy Summit," December 19, 2007, *available at* http://myfloridalegal.com/newsrel.nsf/newsreleases/ (last visited April 24, 2008); "McCollum: Education, Prevention, Rehabilitation Key to State Gang Strategy," January 30, 2008, *available at* http://myfloridalegal.com/newsrel.nsf/newsreleases/ (last visited April 24, 2008).

[13] *See* "Attorney General, Legislative Leaders Announce Tough Anti-Gang Legislation," January 23, 2008, *available at* http://myfloridalegal.com/newsrel.nsf/newsreleases/ (last visited April 24, 2008). The new legislation follows recommendations by a Statewide Grand Jury that include enhanced penalties for being the leader, or "kingpin," of a gang, requirements for gang registration for convicted gang members, civil causes of action against gang members, additional RICO predicate incidents for gang activities, driver's license suspensions for members, and a new crime for being a habitual offender for gang-related activities. *See id.*

clear, workable rule announced in *Belton* and reaffirmed in *Thornton*. Law enforcement officers simply should not be required to risk their own safety, as well as the public's safety, by either failing to secure an arrestee before being permitted to search his vehicle, or waiting for a warrant on the side of a road following a potentially dangerous arrest. Instead, regardless of the specific threats and circumstances that occur in each fast-moving, highly-volatile arrest, officers should be able to protect themselves and the public, as well as preserve evidence in the fight against crime, by searching the vehicle contemporaneous to the arrest. This holding made sense twenty-seven years ago when *Belton* was decided, and it continues to remain a crucial facet of effective and safe law enforcement practice to this day.

CONCLUSION

For all of the above reasons, this Court should reverse the Arizona Supreme Court's judgment and hold that *Belton* should have been applied to Gant's case, such that the search of his vehicle was compliant with the Fourth Amendment.

Respectfully submitted,

BILL MCCOLLUM
Attorney General of Florida

Scott D. Makar*
Solicitor General of Florida
**Counsel of Record*
Craig D. Feiser
Courtney Brewer
Deputy Solicitors General
PL-01, The Capitol
Tallahassee, FL 32399-1050
850-414-3300
850-410-2672 fax
Counsel for Amicus Curiae
State of Florida

May 19, 2008